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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,194	08/21/2000	Reinhold Klipper	Mo-5663/LeA 33,915	8706

157 7590 12/10/2002

BAYER CORPORATION
PATENT DEPARTMENT
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

ZITOMER, FRED

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 12/10/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/643,194

Applicant(s)
Klipper et al.

Examiner
Fred Zitomer

Art Unit
1713



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 16, 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 16, 2002 has been entered.

2.

This responds to the communication of September 16, 2002. The rejection of record of claims 1-16 under 35 U.S.C. 103(a) over Timm and Klipper et al. and Corte '719 is maintained as stated below. No claim is allowed.

3.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Timm, US 4,444,961, and Klipper et al., US 4,952,608, and Corte et al., US 3,006,866, hereinafter Corte '866.

The claimed process is a compilation of generally known steps. Timm for example as acknowledged at page ² ~~3~~, lines ²⁷⁻³² ~~13-17~~ of applicant's disclosure teaches instant step (a), viz. the method for a monodisperse crosslinked vinylaromatic base polymer. Klipper teaches the

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amidomethylation and conversion to an aminomethylated bead polymer of instant steps (b) and © including the instant embodiments of a phthalimide ether and sulfuric acid catalysis [column 1, lines 27-54; column 3, line 18 - column 4, line 5; claims 3,5,6 and 7]. Corte '866 teaches introducing aminoalkyl groups via chloromethyl phthalimide and subsequent alkylation to form weak or strong anion exchangers, i.e. instant step (d) [paragraph bridging columns 1 and 2; column 3, line 43 - column 4, line 2]. It would have been obvious to prepare anion exchangers according to instant steps (a) to (d) because Timm and Klipper and Corte '866 teach each step of the process.

5.

Applicant's arguments filed September 16, 2002 have been fully considered but they are not persuasive.

Applicant repeats the argument set forth in prior communications that the examiner's conclusion of obviousness is based on improper hindsight. By way of reply, the same response given in the prior Office action (Paper No. 9 at page 3) is retained.

Applicant states that unexpected results have been obtained for the present monodisperse anion exchangers versus heterodisperse anion exchangers as evidenced by comparative data described in the Klipper declaration. However:

- this merely states what is disclosed by the prior art. It is well known to those of ordinary skill in the art that monodisperse anion exchange resins afford advantages over heterodisperse

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resins in the way of enhanced physical properties, resin performance and economics. See e.g. Timm [Abstract; column 1, lines 29-45; column 3, lines 39-44 and 56-58].

- assuming *arguendo* that one or more previously unknown benefits did result from the use of monodisperse anion exchangers the claimed invention would still be obvious. In this regard it is well settled that unexpected results do not outweigh expected results and that another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. In the present case one skilled in the art would understand to use monodisperse resins for the advantages disclosed by Timm and others and any additional benefits would not impact patentability.

6.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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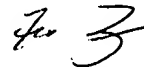
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Zitomer whose telephone number is (703) 308-2461. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful David Wu can be reached at (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 (before final) and (703) 872-9311 (after final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.



FRED ZITOMER, PhD
PRIMARY EXAMINER
ART UNIT 1713

Zitomer/fz
December 3, 2002